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[REDACTED]
OCT 01 1990

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(4) of the Internal Revenue Code.

The information discloses that you were incorporated under the laws of [REDACTED] on [REDACTED].

Your stated purposes in your Articles of Incorporation are to provide for maintenance, preservation, and architectural control of residential lots, and to own, improve, maintain and preserve the Common Areas within the ownership of [REDACTED], in [REDACTED], and to promote the health, safety and welfare of the residents within such area.

Your By-Laws provide that members are those persons or entities who hold a membership in the Association.

Your activities consists of maintaining the common grounds, providing architectural control, improving and maintaining the services and facilities of the common areas of the Association and providing residents with trash services and snow removal. You are also active in providing architectural control by maintaining an Architectural Review Board which oversees that the acceptable standards and guidelines are adhered to for the external appearance of the area in order to preserve the architectural character and value of homes in the area. Your income comes solely from membership dues and interest. Expenses have been for the items listed above.

The information submitted discloses that the Association instituted a key-lock program for your tennis courts whereby [REDACTED] residents only can purchase a key to the locked gate for an annual fee of \$[REDACTED].

The intention is quite clear, as stated in your By-Laws and Declaration of Covenants, Conditions and Restrictions, that the common areas and facilities are not for the use and enjoyment of the general public.

[REDACTED]

As stated in your Articles of Incorporation, "Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership."

Article II, Section 4 of your By-Laws state "Common Area" shall mean all real property (including the improvements thereto) which may hereafter be acquired by the Association for the common use and enjoyment of the members of the Association."

The Declaration of Covenants, Conditions and Restrictions applicable to the property which were recorded on [REDACTED], by and between the developer, [REDACTED], and [REDACTED], provided: "Whereas, Declarant has deemed it desirable for the efficient preservation of the values of said community"... to create the Homeowners Association.

It also states that the "Covenants and Restrictions" are "for the purpose of protecting the value and desirability of, and shall run with, the real property" (covered by [REDACTED]) "and shall inure to the benefit of each owner thereof."

Section 501(c)(4) of the Code provides for the recognition of exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this Section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 71-102, 1972-1 C.B., page 149, states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of the residents is exempt under section 501(c)(4) of the Code. Membership is required of all owners of real property in the development and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by a municipal government, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, 1974-1 C.B., page 181, modified Revenue Ruling 72-102 by stating guidelines under which a homeowners' association could qualify for exemption under section 501(c)(4) of the Code. These guidelines are:

1. The organization must serve a "community" which bears a reasonable, recognizable relationship to an area ordinarily identified as a governmental unit;
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities must be for the use and enjoyment of the general public.

Revenue Ruling 74-99 states that Revenue Ruling 72-102 "... was intended only to approve ownership and maintenance by a homeowners' association of such areas as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners' association..."

Accordingly, since you conduct activities that enhance the property value of your members, we conclude that you are serving a private rather than public purpose.

Your common areas, other than roads and easements, are not open for the use and enjoyment of the general public. Therefore, you do not qualify for exemption from federal income tax as an organization described in section 501(c)(4) of the Code.

You are required to file federal income tax returns on Form 1120.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a homeowners' association may elect not to be taxed on its "exempt function income" which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H, if you determine that your organization qualifies under section 528.

[REDACTED]

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you do not appeal this determination within 30 days from the date of this letter, as explained in the enclosed Publication 892, this letter will become our final determination on this matter.

Sincerely yours,

[REDACTED]
District Director

Enclosure: Publication 892